

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

FUSION ELITE ALL STARS, et al.,

Plaintiffs,

v.

VARSITY BRANDS, LLC, et al.,

Defendants.

Case No. 2:20-cv-02600-SHL-cgc

JURY DEMAND

AMERICAN SPIRIT AND CHEER
ESSENTIALS, INC., et al.,

Plaintiffs,

v.

VARSITY BRANDS, LLC, et al.

Defendants.

Case No. 2:20-cv-02782-SHL-atc

JURY DEMAND

JESSICA JONES, et al.,

Plaintiffs,

v.

VARSITY BRANDS, LLC, et al.

Defendants.

Case No. 2:20-cv-02892-SHL-tmp

JURY DEMAND

**PLAINTIFFS' NOTICE REGARDING THE DEPOSITION OF DAVID OWENS AND
DEFENDANTS' MOTION FOR SANCTIONS AND FOR PROTECTIVE ORDER**

At the May 17, 2022 hearing regarding the length of the David Owens deposition, taking place that same day, Defendants' counsel stated that they were willing to agree to an extension of the length of the deposition to allow Plaintiffs to ask questions of Mr. Owens, provided Plaintiffs finished in one day. This was despite Defendants' stating earlier in the day that they would not agree to Plaintiffs' questioning Mr. Owens. (Mr. Owens and his counsel, who joined in Plaintiffs' request for guidance from the Chief Magistrate, had already agreed to extended hours or a second day, if necessary.) Chief Magistrate Pham stated that there was "a real possibility here that this issue gets resolved through the cooperation of both counsel and the deponents and deponent's attorney willingness to stay later in the evening. It sounds like pretty late. Maybe everyone can get their questions in and bring some resolution to this matter." The Court asked the parties to jointly file a notice after the end of questioning to inform the Court whether there remained any issues.

Defendants did not complete their questioning until [4:45](#) p.m., but Plaintiffs endeavored to—and did—shorten their examinations so that they could finish on May 17. That is, Plaintiffs ~~sacrificed~~[sacrificed](#) deposition time to which they were entitled in order to reach resolution on the issues surrounding the deposition. Given the fact that Defendants expressly gave their consent—in the Chief Magistrate's presence and on the record—to Plaintiffs' questioning Mr. Owens provided Plaintiffs finish their questioning on May 17, 2022, which Plaintiffs did, Plaintiffs submit that there are no remaining issues. Plaintiffs' position is that Defendants' motion seeking sanctions is now moot and should be withdrawn.

Earlier today, Plaintiffs drafted and shared with Defendants a draft notice informing the Court that there are no remaining issues and that Defendants' motion is withdrawn. However, Defendants replied that they did not agree and would be filing their own notice. Defendants filed

their notice two minutes after responding to Plaintiffs' email, continuing to seek sanctions for, among other things, Plaintiffs' reaching out to the Court for guidance, and Plaintiffs' providing Defendants with over a week's notice of their intent to question Mr. Owens—far more notice than Defendants have provided to Plaintiffs in the same situation. -Given that the situation was resolved just as Defendants had agreed, Defendants' notice is nothing more than a waste of judicial resources.

Defendants have not been prejudiced in any way by Plaintiffs' questioning of Mr. Owens, which, as Defendants' counsel conceded at the hearing, is Plaintiffs' right and to which the witness and his attorney had ~~expressely~~expressly agreed. If anything, it was Plaintiffs who were prejudiced by Defendants' conduct.

Plaintiffs respectfully request an Order stating that Defendants' motion is denied as moot. In the alternative, Plaintiffs are ready to respond to Defendants' motion should the Court so require.

Dated: May 18, 2022

Respectfully submitted,

By: /s/ Joseph R. Saveri
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CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2022, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

Dated: May 18, 2022

By: /s/ Joseph R. Saveri
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